Supreme Court, U.S.
FILED
991259 JAN 3 1 2000
OFFICE OF THE CLERK

CASE # _____

In The Supreme Court Of The United States

ARTURO ARIZAGA RAMOS,

PETITIONER,

v.

DISTRICT DIRECTOR, EXECUTIVE OFFICE FOR IMMIGRAITON REVIEW, OFFICE OF IMMIGRATION JUDGE

RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI
with APPENDIX

JAMES JOSEPH LYNCH, JR
ATTORNEY AT LAW SBN 85805
2740 HOWE AVE.
P. O. BOX 336
SACRAMENTO, CA 95812-0336
OFFICE: (916) 448-7871
FAX: (916) 448-0549

COUNSEL FOR PETITIONER
ARTURO ARIZAGA RAMOS

39PP

THE QUESTIONS PRESENTED FOR REVIEW

Whether, in light of *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) and *Matthews v. Diaz*, 426 U.S. 67, 77 (1976), among others, *Reno v. American-Arab Anti-Discrimination committee*, 42 L.Ed.2d 929 (1999) is distinguishable in that the latter case, dealt with illegal aliens whereas in this case Petitioner, as a legal resident alien with minimum constitutional guarantees of due process such that IIRIRA is unconstitutional:

(i) where the manner in which bail, detention and the respect for court's orders regarding stays are concerned in light of the 8th Amendment, as construed by this Court making the provision on prohibition against excessive bail applicable to legal resident aliens in *Stack v. Boyle*, 342 U.S. 1, 4 (1951); *Wong Yang Sung v. McGrath*, 339 U.S. 33, 49 (1950)?.

(ii) in denying appeal, *habeas corpus*, judicial review or a challenge to the law in view of *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886); *Traux v. Raich*, 239 U.S. 33, 39 (1915); *Takahashi v. Fish & Game Commission*, 334 U.S. 419, 420 (1948); *Hampton v. Mow Sun Wong*, 426 U.S. 88 (1976)); *Mothers & Children's Rights Organization v. Sterrett*, 467 F.2d 797 (7th Cir., 1972); *Yee-Litt v. Richardson*, 353 F.Supp. 996 (1973), judgment *affirmed* 412 U.S. 924?

(iii) in mandating deportation of a resident legal aliens on the mere finding of being an "aggravated felon" without an affording the alien an opportunity to show factors in mitigation, or other good cause in defense of deportation as denying due process rights of legal resident aliens in view of *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) and *Matthews v. Diaz*, 426 U.S. 67, 77 (1976); *Procunier v. Martinez*, 416 U.S. 396 (1978); *Woodson v. North Carolina*, 428 U.S. 280 (1976); *Roberts v. Louisiana* (1976) 428 U.S. 325, 333-334; *Baldwin v. Alabama*, 105 S.Ct. 2127 (1985); *Sumner v. Shuman*, 483 U.S. 66 (1987); *Solem v. Helm*, 463 U.S. 277 (1983?

TABLE OF CONTENTS

THE QUESTIONS PRESENTED FOR REVIEW i
TABLE OF CONTENTS ii
TABLE OF AUTHORITIES xii
PETITION FOR WRIT OF HABEAS CORPUS 12
OPINIONS BELOW 12
JURISDICTIONAL STATEMENT 12
STATUTORY PROVISIONS INVOLVED 12
JURISDICTION OF DISTRICT COURT 12
STATEMENT OF THE CASE 12
A. HISTORY OF THE CASE 12
B. HISTORY BAIL ISSUE 12
C. SUMMARY OF THE FACTS ON MERITS 12
C. SUMMARY OF RELEVANT IIRAIRA 12
SUMMARY OF ARGUMENT IN SUPPORT OF REVIEW 12
ARGUMENT IN SUPPORT OF REVIEW 12
I THE DISTRICT COURT AND NINTH CIRCUIT HAVE DECIDED IMPORTANT QUESTIONS OF LAW IN A WAY WHICH CONFLICTS WITH APPLICABLE DECISIONS OF THIS COURT 12
A. THE ISSUES RAISED INVOLVE IMPORTANT QUESTIONS OF LAW AFFECTING A LARGE MINORITY POPULATION GROUP SUGGESTING INHERENT UNFAIRNESS 12
1. **The case law relied on by the Ninth Circuit either has no relevancy to the case at bench, or overlooked an important point of law not available to the parties at time of oral argument** 12

2. While Congress has exclusive and plenary powers over immigration, it cannot act arbitrarily or contrary to Provisions of the Constitution. 12

3. This Court has held that Resident Legal Aliens are entitled to due process of law. 12

B. THE HANDLING OF THE STAY IN THIS CASE IS A MAJOR DEPARTURE FROM THIS COURT'S PRECEDENCE FAVORING BAIL FOR LEGAL RESIDENT ALIENS. 13

C. THE DENIAL OF JUDICIAL REVIEW AND HABEAS CORPUS RELIEF REPRESENTS A MAJOR AND PROPOUND DEPARTURE FROM THIS COURT'S PRECEDENCE FAVORING AT LEAST DUE PROCESS FOR RESIDENT LEGAL ALIENS, AND APPEARS TO BE BEYOND CONGRESSONAL POWER IN VIEW OF U.S. CONST. ART. I, § 9. 14

D. MANDATORY DEPORTATION UPON THE FINDING OF BEING AN "AGGRAVATED FELON" APPEARS TO BE A MAJOR DEPARTURE FROM PRECEDENT OF THIS COURT REQUIRING A CASE BY CASE DETERMINATION AS TOTHE APPROPRIATENESS OF A PARTICULAR REMEDY 15

CONCLUSION 16

APPENDIX 1

NINTH CIRCUIT

MEMORANDUM, 11/15/99 ..... A1

ORDER [REHEARING & REH. EN BANC], 1/12/00 ..... A4

ORDER [TEMPORARY STAY], 5/27/99 ..... A5

ORDER [STAY PENDING REMITTITUR], 10/28/99 ..... A7

ORDER [SANCTIONS], 12/6/99 ..... A8

DELEON V. INS A9

IMMIGRATION COURT
ORDER [REMOVAL], 12/18/98 ..... A11
EXCERPTS, U.S. CONSTITUTION A12
ART. I, SECTION. 9. ..... A12
ART. III, SECTION. 2. ..... A12
ARTICLE 6 ..... A12
1ST AMENDMENT A12
5TH AMENDMENT A13
6TH AMENDMENT A13
14TH AMENDMENT A13
McKechnie, MAGNA CARTA; THE GREAT CHARTER OF AKING JOHN A13
Magna Carta 1215 ..... A13
Art. 36 [Writ of Habeas Corpus] A13
Art. 41 [Foreign Merchants] A14
Art. 61 [Security Clauses] A14

TABLE OF AUTHORITIES

CASES

Agunobi v. Thornburgh, 745 F. Supp. 533 (N.D. Ill. 1990) 14

Baldwin v. Alabama, 105 S.Ct. 2127 (1985) ..... ii, 8, 18

Berroteran-Melendez v. INS, 955 F.2d 1251 (9th Cir. 1992) 10

Bivens v. Six Unknown Agents of the FBN, 403 U.S. 388 (1971) 3, 12

Boerne v. P.F. Flores, 521 U.S. 511 (1997) 12, 13

Bolling v. Sharpe, 347 U.S. 497 (1954) 11, 12, 13

Briseno v. INS, 97-71182 10

Butz v. Economou, 438 U.S. 478 (1975) 12

Cabaljero v. Caplinger, 914 F. Supp. 1374 (E.D. La. 1996) 15

Ekeklior v. Aijeus, 979 F.Supp. 540 (N.D. Ill. 1997) 15

Fiallo v. Bell, 430 U.S. 787 (1977) 9

Graham v. Richardson, 403 U.S. 365 (1971) 14

Guessefeldt v. McGrath, 342 U.S. 308 (1952) 11

Hampton v. Mow Sun Wong, 426 U.S. 88 (1976) i, 7, 11, 16

Kellman v. INS, 750 F.Supp. 625 (S.D.N.Y. 1990) 14

Landon v. Plasencia, 459 U.S. 21, 32 (1982) . i, ii, 7, 15, 17

Leader v. Blackman, 744 F.Supp. 500 (S.D.N.Y. 1990) 14

Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803) 12

Matthews v. Diaz, 426 U.S. 67, 77 (1976) ..... i, ii, 8, 15, 17

McCulloch v. *Maryland*, 4 Wheat. 316 (1819) 12

Mother's and Children's Rights Organization v. Sterrett, 467 F.2d 797 (7th Cir., 1972) ..... i, 7, 16

Paxton v. INS, 745 F. Supp. 1261 (E.D. Mich 1990) 14

Probart v. INS, 750 F.Supp. 1007 (E.D. Mich. 1990) 14

Procunier v. Martinez, 416 U.S. 396 (1978) ..... ii, 8, 11, 17
Reno v. American-Arab Anti-Discrimination committee, 42 L.Ed.2d 929 (1999) ..... i, 9, 15, 17
Roberts v. Louisiana, 428 U.S. 325 (1976) ..... ii, 8, 18
Sailesian-American Corp. v. Clark, 332 U.S. 469 (1947) 11
Solem v. Helm, 463 U.S. 277 (1983) 8, 18
St. John v. McElory, 917 F. Supp. 243 (SDNY 1996) 15
Stack v. Boyle, 342 U.S. 1 (1951) ..... i, 7, 15
Sumner v. Shuman, 483 U.S. 66 (1987) ..... ii, 8, 18
Takahashi v. Fish & Game Commission, 334 U.S. 419 (1948) ..... i, 7, 14, 16
Traux v. Raich, 239 U.S. 33 (1915) ..... i, 7, 12, 14, 16
United States v. Chemical Foundation,, 272 U.S. 1 (1926) 11
Wayman v. Southhard, 23 U.S. (10 Wheat.) 1 (1825) 13
Wong Yang Sung v. McGrath, 339 U.S. 33 (1950) ... i, 7, 15
Woodson v. North Carolina, 428 U.S. 280 (1976) ... ii, 8, 18
Yee-Litt v. Richardson, 353 F.Supp. 996 (1973), *affirmed* 412 U.S. 924 ..... i, 7, 16
Yick Wo v. Hopkins, 118 U.S. 356 (1886) .... i, 7, 11, 14, 16

CONSTITUTIONS

United States
Art. I, § 9 ..... 10, 13
1st Amend 7, 8, 17
5th Amend 7, 12, 17
8th Amend ..... i, 7, 15
14th Amend 11
Bill of Rights 10
England
Magna Carta, Art. 41 11

CODES

United States

8 U.S.C., § .1252(b) 3
8 U.S.C., § 1252(a)(2)(C) 2, 6
28 U.S.C. § 1254(1) 2
28 U.S.C. § 1331 3
28 U.S.C. § 1361 3
28 U.S.C. § 1651 3
28 U.S.C., § 2101(c) 2

California

Health & Safety C., § 11378 5

STATUTES

United States

IIRAIRA § 304(a)(3) 2, 6
IIRAIRA § 304(a)(3) 2, 6
INA § 240A(a) 4
INA § 240A(c) 2, 3, 6
INA § 241(a)(2)(B) 2, 6
INA, § 212(c) 2, 6

RULES & REGULATIONS

United States

FRAP, Rule 40(a)(1) 2
Supreme Court Rule 13.1 2

TREATISES

McKechnie, Magna Carta; THE GREAT CHARTER OF KING JOHN 11

MISCELLANEOUS

3 Rotunda, Treatise On Constitutional Law § 22.5 ..... 8, 18
24B C.J.S., Criminal Law § 1974 ..... 8, 18

CASE # 99-16047

In The Supreme Court Of The United States

ARTURO ARIZAGA RAMOS,

PETITIONER

vs.

DISTRICT DIRECTOR, EXECUTIVE OFFICE FOR IMMIGRAITON REVIEW, OFFICE OF IMMIGRATION JUDGE

RESPONDENT

PETITION FOR CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

There is no published opinion in this case.

The memorandum of the Ninth Circuit is set forth at p. A1 of the appendix. The order denying rehearing and rehearing en banc is set forth at page A5. The Ninth Circuits temporary stay of deportation pending hearing is set out at page A6. The order of the Ninth Circuit granting stay until mandate is set out at page A8. The Ninth Circuit's De Leon decision is set out at page A9. The decision of the INS pretermitting all legal issues in the administrative hearing is set forth at page A11.

JURISDICTIONAL STATEMENT

1. The decision of the Ninth Circuit affirming the district court was filed on November 15, 1999. Page A1

2. Petitioner filed a timely petition for rehearing and suggestion for rehearing *en banc* on December 8, 1999.[1]

[1] "Unless the time is shortened or extended by order or local rule ... in a civil case, if the united States or its officer or agency is a party, the time within

3. The Ninth Circuit denied the petition for rehearing and suggestion for rehearing *en banc* on January 12, 2000. Page A5.

4. Petitioner believes that 28 U.S.C. § 1254(1) and 2101(c) and Supreme Court Rule 13.1 probably confer *jurisdiction* on this court because the petition seeks review of an action within 90 days of the entry of an order denying a petition for rehearing.

STATUTORY PROVISIONS INVOLVED

The applicable constitutional and statutory provisions involved in this case are set forth in the appendix beginning at page A.

IIRAIRA eliminated former section 212(c) relief and in its place permits the Attorney General to "cancel removal" of inadmissible or deportable permanent residents. IIRAIRA § 304(a)(3) creating INA § 240A(c). The applicant must:

1. Have been a permanent resident for at least five years

2. Have continuously resided in the U.S. for seven years after having been "admitted in any status," and

3. Not have a conviction for an aggravated felony.[2]

There is no judicial review for persons convicted of an aggravated felony. 8 U.S.C., § 1252(a)(2)(C).

IIRAIRA permits aliens an opportunity to appeal, judicial review, habeas corpus relief, and expedited judicial proceedings to challenge the constitutionality of IIRAIRA, but denies this opportunity to those convicted of certain specified felonies denominated 'aggravated' felonies. IIRAIRA § 304(a)(3) creating INA § 240A(c) [8 U.S.C., § .1252(b).]

JURISDICTION OF DISTRICT COURT

Jurisdiction of the district court was invoked under 28 U.S.C. § 1331, and 1361, and Constitution, Art. I, § 9, restricting suspension of writs of habeas corpus, invoking the habeas corpus power of the

---

which any party may seek rehearing is 45 days after entry of judgment, unless an order shortens or extends time." FRAP, Rule 40(a)(1).

[2] The relevant offense in this case is § 241(a)(2)(B) (controlled substance offences and drug abuser)

district court under 28 U.S.C., § 1651, the All Writs Act, for redress of denial of procedural and substantive due process rights arising under the 1st and 5th Amendments.

STATEMENT OF THE CASE

A. HISTORY OF THE CASE

On April 19, 1999, Appellant filed a complaint for *habeas corpus* relief, etc, and a TRO staying deportation until the court had an opportunity to rule on the merits.

The parties stipulated to a briefing schedule, however the court vacated that, set its own briefing schedule, with a hearing set on the merits and on the TRO for May 25, 1999. The Court then vacated the hearing and took the matter under submission, and entered its order denying preliminary injunction. Appellant timely appealed, and now brings this petition.

B. HISTORY OF BAIL ISSUE

Immediately after filing the Notice of Appeal in the District Court on 5/26/99, Petitioner filed an Emergency Motion under Circuit Rule 27-3 for stay pending appeal in the Ninth Circuit. On May 27, 1999, the court, relying on DeLeon v. INS, 115 F.3d 643 (9th Cir. 1997), App., p. A9, granted a temporary stay of deportation. App. P. A . On October 28, 1999, the court granted the motion for stay until the mandate in the case issued. App. P. A6.

Relying on the order to stay deportation, petitioner did not report for deportation on June 1, 1999. On June 16, 1999, INS sent the obligor under the bond a Notice of Immigration Bond Breach. Exh. 3b, Emergency Motion filed 11/24/99. On September 30, 1999, INS denied petitioners motion for relief under the bond based on good cause in view of the Ninth Circuit stay. Id, Exh. 4. Subsequently, petitioner's father's home was levied on for the bond amount. On November 2, 1999, Petitioner filed a timely Notice of Motion for reconsideration. Id, Exh. 5. Petitioner was orally advised no action would be taken on the last motion.

On November 24, 1999, Petitioner filed another Emergency Motion for sanctions and other relief based on INS's violation of the Stay order. The motion was denied without opinion. App. p. A4.

C. SUMMARY OF THE FACTS ON MERITS

Plaintiff was born on January 25, 1972, Guadalajara, Jalisco, Mexico. On or about November 7, 1977, at about age 5-1/2, plaintiff was brought to this country by his parents, with his two siblings. Plaintiff has resided continuously since in the United States, taking only one two-week vacation in 1992 or 1993 to visit Mexico. He is a lawful permanent resident (LPR).

Plaintiff completed elementary school in or around 1985. While in high school, plaintiff attended Yuba College on a ROP program for welding trades He dropped out of high school in or around 1990 to go to work to help with the family finances.

In 1993, Plaintiff suffered a conviction for violation of Section 493 of the California Penal Code, receiving stolen goods, and placed on probation.

Plaintiff worked for Speckles Sugar from 1990 to mid 1995.

In November 18, 1994, Plaintiff married Emilie (nee Garcia) Ramos.

On December 5, 1994, Plaintiff was arrested for violation of Section 11378 of the Health and Safety Code, sales, a felony. Defendant was convicted on July 28, 1995, and eventually released on parole June 20, 1997. His conviction is, under IIRAIRA, a defined "aggravated felony."

At the time of his release, there was an INS hold for deportation under INA § 240A(a), that mandates deportation for aliens having been convicted of an aggravated felony, as defined, to wit a conviction under California Health and Safety Code, § 11378, without an opportunity to show factors in mitigation permitting the alien to remain within the United States.

Plaintiff timely filed an application for cancellation of removal from the United States with the Immigration Court, and on November 18, 1998 said court ordered Plaintiff removed from the United States to Mexico, and his application for removal under section 240A(a) was pretermitted, i.e. the court declined to rule on the merits of the application. EOR, p. 12; App., p. A11. An Appeal of the decision was due on or before Friday, December 18, 1998. On Monday, December 14, 1998, Plaintiff mailed a notice of appeal, the applicable check for filing fee. EOR, p. 14. The appeal was

received by the INS Court's mailroom on Monday, December 21, 1998. EOR, pp. 15 & 16. On December 29, 1998, the Office of the Clerk, Board of Immigration Appeals, acknowledged receipt for the appeal. EOR, p. 16. On March 12, 1999, The Board of Immigration Appeals found that the appeal was untimely the decision final, and returned the file to the Immigration Court without further action. EOR, p. 17. Thereafter, Petitioner filed for habeas corpus relief in the District Court.

Plaintiff's spouse, parents, and siblings all still lawfully reside in the United States.

C. SUMMARY OF RELEVANT IIRAIRA

Sec. 304 of Subtitle A, of Title III, established a single "removal" hearing in place of the former separate deportation and exclusion hearings. It defined "removable" as deportable or excludable.

The section also amended hearing procedures, including eliminating the requirement that notices be provided in English and Spanish. It reduced the mandatory period between notice of hearing and date of hearing to 10 days. Merits hearings may take place in person or by videoconference, or, with the consent of the alien, by telephone. An alien who fails to appear is ineligible for relief (voluntary departure, cancellation of removal, adjustment, change of nonimmigrant classification, registry) for 10 years. An applicant for admission has the burden of proving eligibility for admission "beyond doubt." An alien who is not an applicant for admission must prove, by clear and convincing evidence, lawful presence pursuant to a prior lawful admission. The INS retains the burden to establish by clear and convincing evidence that the alien is deportable.

The section also codified the Executive Office for Immigration Review's new motion to reopen and reconsider regulations, limiting such motions in time and number. It also requires the Attorney General to define "frivolous behavior" of attorneys for which they may be sanctioned, and provides for the alien and the INS to stipulate to an order of removal, which is a "conclusive determination" of removability.

IIRAIRA eliminated former section 212(c) relief and in its place permits the Attorney General to "cancel removal" of inadmissible or deportable permanent residents. IIRAIRA § 304(a)(3) creating INA § 240A(c). The applicant must:

1. Have been a permanent resident for at least five years;

2. Have continuously resided in the U.S. for seven years after having been "admitted in any status," and

3. Not have a conviction for an aggravated felony.[3]

There is no judicial review for persons convicted of an aggravated felony. 8 U.S.C., § 1252(a)(2)(C).

IIRAIRA permits aliens an opportunity to appeal, judicial review, habeas corpus relief, and expedited judicial proceedings to challenge the constitutionality of IIRAIRA, but denies this opportunity to those convicted of certain specified felonies denominated 'aggravated' felonies. IIRAIRA § 304(a)(3) creating INA § 240A(c) [8 U.S.C., § .1252(b).]

SUMMARY OF ARGUMENT IN SUPPORT OF REVIEW

(i) The IIRIRA is unconstitutional, on its face, or as applied to legal resident aliens in the manner in which bail, detention and the respect for this court's orders regarding stays are concerned in light of the 8th Amendment, as construed by this Court making the provision on prohibition against excessive bail applicable to legal resident aliens in *Stack v. Boyle*, 342 U.S. 1, 4 (1951); *Wong Yang Sung v. McGrath*, 339 U.S. 33, 49 (1950).

(ii) The IIRIRA is unconstitutional, on its face, or as applied, in denying appeal, judicial review or a challenge to the law in view of *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886) (Businesses; municipal ordinance unconstitutional); *Traux v. Raich*, 239 U.S. 33, 39 (1915) (Employment; restriction unconstitutional); *Takahashi v. Fish & Game Commission*, 334 U.S. 419, 420 (1948) (Fishing rights); *Hampton v. Mow Sun Wong*, 426 U.S. 88 (1976) (Federal employment for legal resident aliens); *Mothers & Children's Rights*

---

[3] The relevant offense in this case is § 241(a)(2)(B) (controlled substance offences and drug abuser)

Organization v. Sterrett, 467 F.2d 797 (7th Cir., 1972); *Yee-Litt v. Richardson*, 353 F.Supp. 996 (1973) [Rejecting the fact-policy distinction; pre-termination argument required prior to termination of benefits], judgment *affirmed* 412 U.S. 924.

(iii) The IIRIRA is unconstitutional, on its face, or as applied, in mandating the deportation of resident legal aliens on the mere finding of being an "aggravated felon" without an affording an alien to show factors in mitigation, or other good cause in defense of deportation as denying due process rights to the legal resident alien under the 1st and 5th Amendments, as protected by procedural due process under the 5th Amendment in view of *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) and *Matthews v. Diaz*, 426 U.S. 67, 77 (1976); *Procunier v. Martinez*, 416 U.S. 396 (1978) (1st Amendment; Communications; Family Rights); *Woodson v. North Carolina*, 428 U.S. 280 (1976); *Roberts v. Louisiana* (1976) 428 U.S. 325, 333-334; *Baldwin v. Alabama*, 105 S.Ct. 2127 (1985) (Statute saved because after jury imposition of death penalty, judge weighed aggravating and mitigating circumstances to determine whether or not penalty would in fact be imposed); *Sumner v. Shuman*, 483 U.S. 66 (1987) (Applies to Prisoners who, serving life for murder, are convicted of killing a fellow inmate; deterrence value rejected; narrow class of cases rejected); *Solem v. Helm*, 463 U.S. 277 (1983)(Will not foreclose the possibility for rehabilitation): 24B C.J.S., Criminal Law § 1974, at n. 5.5 (Banishment is punishment); 3 Rotunda, Treatise On Constitutional Law § 22.5 (Involuntary Expatriation Impermissible.).

Conclusion. Based upon the foregoing, this court should grant the writ of certiorari, and reverse summarily and remand for further consideration, or set the matter for briefing and argument on the merits.

ARGUMENT IN SUPPORT OF REVIEW

I

THE DISTRICT COURT AND NINTH CIRCUIT HAVE DECIDED IMPORTANT QUESTIONS OF LAW IN A WAY WHICH CONFLICTS WITH APPLICABLE DECISIONS OF THIS COURT

A. THE ISSUES RAISED INVOLVE IMPORTANT QUESTIONS OF LAW AFFECTING A LARGE MINORITY POPULATION GROUP SUGGESTING INHERENT UNFAIRNESS

1. The case law relied on by the Ninth Circuit either has no relevancy to the case at bench, or overlooked an important point of law

These matters were brought to the Ninth Circuit's attention in petitioner's petition for rehearing and request for rehearing en banc.

The memorandum below cited *Reno v. AADC, supra*. The court based its decision on the premise that "As a general matter —and assuredly in the context of claims such as those put forward in the present case— an alien unlawfully in this country has no constitutional right to assert selective enforcement as a defense against deportation.[fn. omitted.]" 42 L.Ed. 2d, text at fn. 10. The case at bench involves a permanent lawfully admitted residence alien with identifiable constitutional rights as set forth hereinafter.

The memorandum below also relied on *Fiallo v. Bell*, 430 U.S. 787 (1977) that involved the disparate treatment in admissions of illegitimate children as being excluded from the definition of "child." Aside from the fact that the status of "illegitimate" is the result of private action, rather than INS action, and affects both those at home and those abroad, the court based its decision on "the serious problems of proof that usually lurk in paternity determinations." 430 U.S., text at fn. 8. This case is, (1) not an admissions case, Petitioner has been in this country since age 5, and (2) there is no paternity issue. Again, Petitioner's 1st and 5th Amendment rights are hinged on the rights defined by the U.S. Supreme Court as set forth supra, because he is a permanent legal resident alien.

Berroteran-Melendez v. INS, 955 F.2d 1251 (9th Cir. 1992) involved an OSC for deportation based on entry without inspection, i.e. illegal entry. Their defense was political asylum. 955 F2d, at 1251. Berroteran-Melendez falls squarely within the penumbra of *Reno, supra* in that an illegal alien acquires no rights. As previously stated, Petitioner is a permanent resident alien, and in view of the rights articulated by this Court, has acquired more than a unilateral expectation of due process prior to removal, including the right to show factors in mitigation.

The following case relied upon by the panel overlooks or ignores an important principal of constitutional law:

Briseno v. INS, 97-71182, is a recent Ninth Circuit decision, decided 10/13/99, and therefore still subject to a petition for writ of *certiorari*. While it appears to be factually and legally similar to Petitioner's, the nature and seriousness of the crimes are substantially different, and the age of entry is substantially different. The rationale of *Briseno* suffers for the same reason the decision in this case suffers: While Congress may have plenary power over immigration matters to the exclusion of the several States, it cannot act in excess of the limitations imposed by the Constitution at Art. I, § 9, and the Bill of Rights, as shown hereinafter..

2. While Congress has exclusive and plenary powers over immigration, it cannot act arbitrarily or contrary to Provisions of the Constitution.

Neither the 5th nor the 14th Amendment defines person. The 14th Amendment defines citizenship.[4] In other contexts, this Court

---

[4] "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, ..."

has held that aliens[5] are persons entitled to Constitutional protection.[6] In *Hampton v. Mow Sun Wong*, 426 U.S. 88 (1976), the Court held that having invited aliens to this country, and given them green cards, the United States could not deny them employment based on alienage, declaring the ban on use of aliens unconstitutional. The fact of the matter is, treatment of even non resident aliens with courtesy and full protection of the internal laws of the state through which an alien passes has its historical precedent in the Magna Carta.[7] *Magna Carta*, Art. 41; McKechnie, Magna Carta; THE GREAT CHARTER OF KING JOHN. As McKechnie observed, the provision was designed to protect foreigners and promote trade. *Ibid.* Semble, *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886) (Businesses; municipal ordinance unconstitutional); *Traux v. Raich*, 239 U.S. 33, 39 (1915) (Employment; restriction unconstitutional); *Takahashi v. Fish & Game Commission*, 334 U.S. 419, 420 (1948) (Fishing rights).

Under our Constitution, the Federal Government is one of enumerated powers. *McCulloch* v. *Maryland*, 4 Wheat. 316, 405 (1819); see also The Federalist No. 45, p. 292 (C. Rossiter ed. 1961) (J. Madison). The judicial authority to determine the constitutionality of laws, in cases and controversies, is based on the premise that the "powers of the legislature are defined and limited; and that those limits may not be mistaken, or forgotten, the constitution is written." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 176

[5] *E.g., Hampton v. Mow Sun Wong*, 426 U.S. 88 (1976); U.S. Const., Art. VI, Treaty Clause; McKechnie, Magna Carta, Art. 41 (Aliens). There is no constitutional prohibition against confiscation of **enemy property**, but aliens not so denominated are entitled to the protection o f [the 5th Amendment.] C.f., *United States v. Chemical Foundation,*, 272 U.S. 1 (1926); *Stoehr v. Wallace*, 255 U.S. 239 (1921), *with Sailesian-American Corp. v. Clark*, 332 U.S. 469 (1947), *Russian Fleet v. United States*, 282 U.S. 4891 (1931), *and Guessefeldt v. McGrath*, 342 U.S. 308 (1952).

[6] *E.g., Land v. Dollar*, 330 U.S. 731 (1947) (*Replevin*; Stock taken under color of federal law).

[7] Although the issue of an illegal alien is not directly at issue here, as a matter of equal protection implicit in the 5th Amendment (*Bolling v. Sharpe*, 347 U.S. 497 (1954)) they have derivative protection based on the needs of other family members. *E.g., Procunier v. Martinez*, 416 U.S. 396 (1978) [1st Amendment; Communications; Family Rights]

(1803);). *Generally., Boerne v. P.F. Flores*, 521 U.S. 511, 515 (1997).[8]

Whether the Congress relied on its powers under the "necessary and proper" clause or on the 14th Amendment in passing IIRAIRA is not all clear. Article I, § 8, cl. 18 provides,[9] in relevant part:

> "To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

On the other hand, Article I, § 9, provides, in relevant part:

> "[Cl. 1] The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it."

And the 8th Amendment, provides, in relevant part:

> "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

While the line between measures that remedy or prevent unconstitutional actions and measures that make a substantive change in the governing law is not easy to discern, and Congress must have wide latitude in determining where it lies, the distinction exists and must be observed. There must be a congruence and proportionality between the injury to be prevented or remedied and the means adapted to that end. Lacking such a connection, legislation may become substantive in operation and effect. History and our case law

---

[8] The scope of protection afforded by the Bill of Rights is the same, whether asserted against state officials or federal officials.

[9] While the 14th Amendment appears to be directed at the several states, it does not negate the right of Congress to enforce the Bill of Rights as against the federal government. *E.g, Bivens v. Six Unknown Agents of the FBN*, 403 U.S. 388 (1971); *Butz v. Economou*, , 438 U.S. 478 (1975) (Abolishing distinctions in liability for federal government employees acting under color of law and state employees acting under color of law); *Bolling v. Sharpe*, 347 U.S. 497 (1954) (Recognizing an "equal protection" element to the "due process" clause of the 5th Amendment)

support drawing the distinction, one apparent from the text of the Amendment. E.g., *Boerne v. P.F. Flores*, 521 U.S. 511, 519-20 (1997), and *Wayman v. Southhard*, 23 U.S. (10 Wheat.) 1 (1825).

It would be arbitrary and capricious, and violative of the spirit of the 5th Amendment (*Bolling v. Sharpe*, 347 U.S. 497 (1954) (Equal protection implicit in due process clause.).) if we deported aliens merely because they committed an offense in this country for reasons which arose here, when others, by luck of birth, would not similarly be deportable. Factors taken into consideration for deportation, therefore, must take into consideration the context of how many years the alien has been in the country, age at time of arrival, the effect on the rest of the family, especially children, if any, and the impact such a deportation may have in the international community, i.e. is it the right and fair thing to do.

It does not appear that the wholesale detention and deportation of aliens cannot be sustained against the foregoing Constitutional framework.

3. This Court has held that Resident Legal Aliens are entitled to due process of law.

This court has time and again had to set aside congressional legislation that struck at the rights of resident legal aliens.

Aliens are a prime example of a 'discrete and insular' minority for whom heightened judicial solicitude is appropriate. *Graham v. Richardson*, 403 U.S. 365 (1971) (Social security; state statute unconstitutional); *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886) (Businesses; municipal ordinance unconstitutional); *Traux v. Raich*, 239 U.S. 33, 39 (1915) (Employment; restriction unconstitutional); *Takahashi v. Fish & Game Commission*, 334 U.S. 419, 420 (1948) (Fishing rights). International relations is protected by Art. VI, cl 2 (treaty clause), such that disparate treatment of aliens lawfully within the country ought not be tolerated unless clearly warranted and tied to a clearly defined and legitimate governmental interest.

Successful procedural and substantive due process challenges were brought to a former provision of the Immigration Act of 1988, which required the mandatory detention of all aggravated felons. *E.g., Leader v. Blackman*, 744 F.Supp. 500 (S.D.N.Y. 1990) (pre-

sumption of deportability based on an aggravated felony does not eliminate need for bail hearing); *Kellman v. INS*, 750 F.Supp. 625 (S.D.N.Y. 1990); *Paxton v. INS*, 745 F. Supp. 1261 (E.D. Mich 1990) dismissed as moot, 925 F.2d 1465 (6th Cir. 1992); *Probart v. INS*, 750 F.Supp. 1007 (E.D. Mich. 1990), aff'd other gnds, 954F.2d 1253 (6th Cir. 1992); *Agunobi v. Thornburgh*, 745 F. Supp. 533 (N.D. Ill. 1990). More recently, successful procedural and substantive due process challenges were brought against a statute that requires the mandatory detention of lawful permanent residents in exclusion proceedings. E.g., *St. John v. McElory*, 917 F. Supp. 243 (S.D.N.Y. 1996); *Ekeklior v. Aijeus*, 979 F.Supp. 540 (N.D. Ill. 1997) (Appeal pending); *Cabaljero v. Caplinger*, 914 F. Supp. 1374 (E.D. La. 1996). *Cabaljero* specifically held as unconstitutional the mandatory detention of a nonlawfully admitted alien with an aggravated felony conviction.

In light of *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) and *Matthews v. Diaz*, 426 U.S. 67, 77 (1976), among others, *Reno v. American-Arab Anti-Discrimination committee*, 42 L.Ed.2d 929 (1999) is distinguishable in that the latter case, dealt with illegal aliens and in this case Petitioner, as a legal resident alien had, under the former cases, minimum constitutional guarantees of due process such that it appears that IIRIRA is unconstitutional as applied to legal resident aliens. However, it requires this court's review to determine that issue and the court ought to do so for the public good in view of the numbers of legal resident aliens potentially affected.

B. THE HANDLING OF THE STAY IN THIS CASE IS A MAJOR DEPARTURE FROM THIS COURT'S PRECEDENCE FAVORING BAIL FOR LEGAL RESIDENT ALIENS.

The IIRIRA appears unconstitutional, on its face, or as applied to legal resident aliens in the manner in which bail, detention and the respect for this court's orders regarding stays are concerned in light of the 8th Amendment, as construed by this Court making the provision on prohibition against excessive bail applicable to legal resident aliens in *Stack v. Boyle*, 342 U.S. 1, 4 (1951); *Wong Yang Sung v. McGrath*, 339 U.S. 33, 49 (1950).

The Ninth Circuit apparently thought it could stay deportation, and stayed deportation. Yet when the INS defaulted Petitioner for

failure to report for deportation, it refused to enforce its order allowing a substantial default.

The scope of bail, and the power of the courts to order bail, or stays, with respect thereto need to be resolved by this court where it impacts on legal resident aliens.

C. THE DENIAL OF JUDICIAL REVIEW AND HABEAS CORPUS RELIEF REPRESENTS A MAJOR AND PROPOUND DEPARTURE FROM THIS COURT'S PRECEDENCE FAVORING AT LEAST DUE PROCESS FOR RESIDENT LEGAL ALIENS, AND APPEARS TO BE BEYOND CONGRESSONAL POWER IN VIEW OF U.S. CONST. ART. I, § 9.

The IIRIRA appears to be unconstitutional, on its face, or as applied, in denying appeal, judicial review or a challenge to the law in view of *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886) (Businesses; municipal ordinance unconstitutional); *Traux v. Raich*, 239 U.S. 33, 39 (1915) (Employment; restriction unconstitutional); *Takahashi v. Fish & Game Commission*, 334 U.S. 419, 420 (1948) (Fishing rights); *Hampton v. Mow Sun Wong*, 426 U.S. 88 (1976) (Federal employment for legal resident aliens); *Mothers & Children's Rights Organization v. Sterrett*, 467 F.2d 797 (7th Cir., 1972); *Yee-Litt v. Richardson*, 353 F.Supp. 996 (1973) [Rejecting the fact-policy distinction; pre-termination argument required prior to termination of benefits], judgment *affirmed* 412 U.S. 924.

The District Court found it had no say in the matter. The Ninth Circuit found that Petitioner had no rights. That finding alone flies in the face of precedent from this court that as a legal resident gains ties with the community, there is a correlative expectation of due process. *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) and *Matthews v. Diaz*, 426 U.S. 67, 77 (1976), among others.

Reno v. American-Arab Anti-Discrimination committee, 42 L.Ed.2d 929 (1999) is distinguishable in that the latter case, dealt with illegal aliens and in this case Petitioner, as a legal resident alien had, under the former cases, minimum constitutional guarantees of due process such that it appears that IIRIRA is unconstitutional as applied to legal resident aliens. However, it requires this court's review to determine that issue and the court ought to do so

for the public good in view of the numbers of legal resident aliens potentially affected.

Because there appears to be a substantial departure from the precedent of this court, affecting a large population comprised of a discrete and insular minority group, this court should grant review as to the powers of congress with respect to legal resident aliens.

D. MANDATORY DEPORTATION UPON THE FINDING OF BEING AN "AGGRAVATED FELON" APPEARS TO BE A MAJOR DEPARTURE FROM PRECEDENT OF THIS COURT REQUIRING A CASE BY CASE DETERMINATION AS TOTHE APPROPRIATENESS OF A PARTICULAR REMEDY

The IIRIRA appears to be unconstitutional, on its face, or as applied, in mandating the deportation of resident legal aliens on the mere finding of being an "aggravated felon." At a minimum, the 1st and 5th Amendments, as protected by procedural due process under the 5th Amendment, appears to require affording a resident legal alien an opportunity to show factors in mitigation, or other good cause in defense of deportation. *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) and *Matthews v. Diaz*, 426 U.S. 67, 77 (1976); *Procunier v. Martinez*, 416 U.S. 396 (1978) (1st Amendment; Communications; Family Rights).

In analogous situations, this court had held that it is unconstitutional to mandate the death penalty on a finding of guilt. The court has reasoned that the death penalty is such a unique penalty, that it requires the exercise of guided discretion. *Woodson v. North Carolina*, 428 U.S. 280 (1976); *Roberts v. Louisiana* (1976) 428 U.S. 325, 333-334; *Baldwin v. Alabama*, 472 U.S. 372 (1985) (Statute saved because after jury imposition of death penalty, judge weighed aggravating and mitigating circumstances to determine whether or not penalty would in fact be imposed); *Sumner v. Shuman*, 483 U.S. 66 (1987) (Applies to Prisoners who, serving life for murder, are convicted of killing a fellow inmate; deterrence value rejected; narrow class of cases rejected); *Solem v. Helm*, 463 U.S. 277 (1983)(Will not foreclose the possibility for rehabilitation). Moreover, banishment has been held to be a form of punishment, and as such unconstitutional. 24B C.J.S., Criminal Law § 1974, at

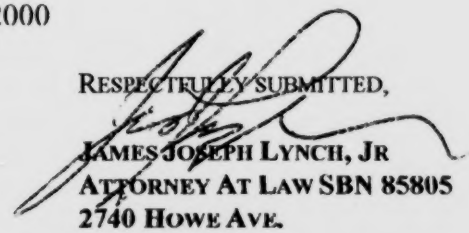
n. 5.5 (Banishment is punishment); 3 Rotunda, Treatise On Constitutional Law § 22.5 (Involuntary Expatriation Impermissible.).

Granted, deportation is not punishment. But is a form of banishment from this Country, as applied to these cases, and as such amounts to constructive banishment. Of urgent concern is that deprivation of quasi-citizenship is second only in impact to the death penalty. In this case, a young man in this country since age 5 will be, without intervention of this court, irretrievably separated for the rest of his life from his family and the only home and life that he knows. And this is a chronic problem that not many in the position of petitioner can afford to fight. Because of the Constitutional issues involved, and the significant impact these laws have on a minority group, it is submitted that the issues are of significant magnitude and importance to warrant the utilization of this court's scant time and resources to resolve the issues raised herein.

CONCLUSION

WHEREFORE, Petitioner prays, for all, or any one of, the foregoing reasons, this court grant the writ of *certiorari* to the Ninth circuit, and summarily reverse and remand, or set the matter for briefing and argument.

Dated: January 23, 2000



RESPECTFULLY SUBMITTED,

JAMES JOSEPH LYNCH, JR
ATTORNEY AT LAW SBN 85805
2740 HOWE AVE.
P. O. BOX 336
SACRAMENTO, CA 95812-0336
OFFICE: (916) 448-7871
FAX: (916) 448-0549

ATTORNEY FOR PETITIONER

APPENDIX

FILED
NOV 15, 1999
CATHY CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ARTURO ARIZAGA RAMOS, JR., Plaintiff/Appellant, vs. District Director, Executive Office for Immigration Review, Office of Immigration Judge, Defendant/Appellee	9th Cir. # 99-16047 [DC No.: 99-1906 SBA] MEMORANDUM[1]

Appeal from the United States District Court
For the Northern District of California
Saundra B. Armstrong, District Judge, Presiding

Argued and Submitted November 1, 1999
San Francisco, California

Before: CANBY, THOMPSON, and GRABER, Circuit Judges.

Plaintiff Arturo Arizaga Ramos, Jr., filed this action, which he labeled a complaint for habeas corpus relief, challenging an order of removal issued against him by the Immigration and Naturalization Service (INS).

Plaintiff contends that habeas relief remains available for constitutional

1. This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

claims, notwithstanding 8 U.S.C., § 1252(b)(9) and (g) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA). The Supreme Court has left his question open. See Reno v. American-Arab Anti-Discrimination Comm., 119 S.Ct. 936, 942 n. 7 (1999).

The district court viewed the mater as a request for an injunction. The court denied that request on two alternative grounds; first, that it lacked jurisdiction under the foregoing provisions of IIRIRA; and, second, that Plaintiff raised no serious question regarding the merits (even if the statute as written violates the suspension clause).

The government advances a third view of the procedural posture of the case. It contends that this court can review constitutional claims on direct review of a removal order and that we should treat the filing of the habeas action as a timely request for such review, filed in the wrong court, and transfer it to ourselves for consideration. See 28 U.S.C., § 1631.

We need not resolve the questions of statutory interpretation and procedure that these three alternatives present because, however Plaintiff might bring his substantive constitutional clams to our attention, none of them has even colorable merit. *See Briseno v. INS*, No. 97-71182, 1999 WL 812942, at *2 (9th Cir. Oct. 13, 1999)(refusing to address whether this court retains jurisdiction over

"colorable constitutional claims" arising under IIRIRA, because plaintiff did not present any such claims).

Plaintiff first argues that Congress violated the Equal Protection Clause and due process by distinguishing between aliens in expedited removal proceedings and other aliens in 8 U.S.C., § 240 removal proceedings. In deference to Congress' plenary power over immigration, *see Fiallo v. Bell*, 430 U.S. 787, 792 (1972), courts evaluate classifications among aliens under the rational-basis test, *see Berroteran-Melendez v. INS*, 955 F.2d 1251, 1258 (9th Cir. 1992). In view of the greater procedural protections afforded in full removal proceedings and the circumstances in which expedited proceedings occur, the distinction is rationally related to legitimate governmental interests.

Plaintiff next argues that he has been denied due process, because he may be deported, a "cruel and unusual punishment," without having had an opportunity to present mitigating evidence. Removal is not, however, punishment. *See Briseno*, 1999 WL 812942, at *2. We already have noted that Congress has plenary power over immigration; that power encompasses the power to enact a statute declaring removable any alien who has committed certain crimes. On Appeal Plaintiff concedes hat he has in fact committed a listed crime.

Plaintiff's other major argument is that "[t]he linchpin of this case is

whether the statute, as applied to [him], is punitive and thereby subject to the [E]x [P]ost [F]acto and [D]ouble [J]eopardy [C]lauses of the United States Constitution." It is, however, well established that neither principle applies here. "While the consequences of deportation may assuredly be grave, they are not imposed as punishment." *Reno*, 119 S.Ct. 947; see also *Galvan v. Press*, 347 U.S. 522, 531 (1954) ("[W]hatever might have been said at an earlier date for applying the *ex post facto* Clause, it has been the unbroken rule of this Court that it has no application to deportation.")

In summary, none of Plaintiff's constitutional claims has even colorable merit. Even if habeas remains available as to colorable constitutional claims, see Webster v. Doe, 486 U.S. 592, 603 (1988), Plaintiff brings no such claim. If instead such claims must be presented to this court in the first instance, we decline to exercise our discretion to transfer the petition here, for the same reason.

AFFIRMED.

FILED

JAN 12, 2000

CATHY CATTERSON, CLERK

U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ARTURO ARIZAGA RAMOS, JR., Plaintiff/Appellant, vs. District Director, Executive Office for Immigration Review, Office of Immigration Judge, Defendant/Appellee	9th Cir. # 99-16047 [DC No.: 99-1906 SBA] ORDER

Before: CANBY, THOMPSON, and GRABER, Circuit Judges.

The panel has voted to deny the petition for rehearing. Judge Graber has voted to deny the petition for rehearing en banc, and Judges Canby and Thompson have so recommended.

The full court has been advised of the petition for rehearing en banc and no judge of the court has requested a vote on it.

The petition for rehearing and petition for rehearing *en banc* are DENIED.

FILED

MAY 27, 1999

CATHY CATTERSON, CLERK

U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ARTURO ARIZAGA RAMOS, JR., Plaintiff/Appellant, vs. District Director, Executive Office for Immigration Review, Office of Immigration Judge, Defendant/Appellee	9th Cir. # 99-16047 [DC No.: 99-1906 SBA] ORDER

Before: W. FLETCHER, Circuit Judge.

This court has received appellant's motion for stay of deportation.

Appellant's deportation is stayed temporarily until the court rules on appellant's motion for stay. *See De Leon v. INS,* 115 F.3d 643 (9th Cir. 1997).

The court *sua sponte* grants appellees an extension of time to file an opposition, or notice of non-opposition, to the motion for stay. The response is due June 17, 1999.

The motion for stay of deportation will be presented to the next available motions panel after receipt of appellees' opposition or notice of non-opposition. In

the event appellees' opposition contains a motion to dismiss the appeal, both motions will be presented to the next available motions panel. *See id.*

The appeal filed May 26, 1999 is a preliminary injunction appeal. Accordingly, Ninth Circuit Rule 3-3 shall apply.

Within 7 days of filing the notice of appeal, the parties shall make arrangement to obtain from the court reporter an official transcript of proceedings in the district court which will be included in the record on appeal. *See* 9th Cir. R. 3-3(b).

The briefing schedule is set as fo9llows: the opening brief is due June 23, 1999; the answering brief is due July 21, 1999; and the optional reply brief is due within 14 days of service of the answering brief. *See* 9th Cir. R. 30-3(b).

The appeal and any motions pending at the time briefing is completed shall be referred to the next available motions panel for disposition. *See* 9th Cir. R. 3-3(d).

FILED

OCT 28, 1999

CATHY CATTERSON, CLERK

U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ARTURO ARIZAGA RAMOS, JR., Plaintiff/Appellant, vs. District Director, Executive Office for Immigration Review, Office of Immigration Judge, Defendant/Appellee	9th Cir. # 99-16047 [DC No.: 99-1906 SBA] ORDER

Petitioner's motion to stay deportation is GRANTED until the mandate in this case issues.

FOR THE COURT

CATHY A. CATTERSON
CLERK OF COURT

By Give Bae
[illegible handwriting]
Deputy Clerk.

FILED

DEC 6, 1999

CATHY CATTERSON, CLERK

U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ARTURO ARIZAGA RAMOS, JR., Plaintiff/Appellant, vs. District Director, Executive Office for Immigration Review, Office of Immigration Judge, Defendant/Appellee	9th Cir. # 99-16047 [DC No.: 99-1906 SBA] ORDER

Before: CANBY, THOMPSON, and GRABER, Circuit Judges.

Appellant's Emergency motion Under Circuit Rule 27-3 for Sanctions for Violation of Stay Order is DENIED.

[REPRINT FROM THE INTERNET]

FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MERCEDES DE LEON,	)	9th Cir. # 97-70127
	)	
Petitioner	)	[DC No.: 99-1906 SBA]
	)	
v.	)	
	)	
IMMIGRATION AND NATURALIZATION SERVICE	)	ORDER
	)	
Defendant/Appellee	)	
	)	

Petition for Review of a Decision of the Board of Immigration Appeals
Submitted to the Motions Panel May 20, 1997

Filed: May 22, 1997

Before: FLETCHER, REINHARDT and FERNANDEZ, Circuit Judges.

COUNSEL

Enrique Arevalo, South Pasadena, California, for the petitioner.

Allen W. Hausman, Office of Immigration Litigation, Department of Justice, Washington, D.C., for the respondent.

ORDER

Petitioner Mercedes De Leon moves for a stay of deportation pending disposition of her petition for review of the Board of Immigration Appeals' order affirming the denial of her applications for asylum and withholding of deportation under sections 208(a) and 243(h) of the Immigration and Nationality Act ("INA"), 8 U.S.C.

1158(a) & 1253(h), and suspension of deportation under section 244(a) of the INA, 8 U.S.C. 1254(a).

Prior to the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208, 110 Stat. 3009 (Sept. 30, 1996), in most cases the filing of a petition for review automatically stayed the petitioner's deportation pending review. See 8 U.S.C. 1105a(a)(3), repealed by IIRIRA 306(b). IIRIRA eliminated the automatic stay. See IIRIRA 309(c)(4)(F). Now, "service of the petition for review shall not stay the deportation of an alien pending the court's decision on the petition, unless the court orders otherwise." Id. The court has been inundated with motions for stay of deportation since the enactment of IIRIRA. To enable this court to process the large number of stay requests, and to eliminate the risk that petitioners will be deported before their stay requests are decided, we adopt the following procedures which shall apply unless and until the court adopts different rules or procedures:

> 1. The filing of a motion for stay or a request for a stay contained in a petition for review will stay a petitioner's deportation temporarily until the court rules on the stay motion;
>
> 2. Respondent's opposition, or notice of non-opposition, to the motion for stay must be filed within seven days after service of the motion on the agency, pursuant to Fed. R. App. P. 27(a); see also Fed. R. App. P. 26(c) (providing three-day extension for filing after service by mail); and,
>
> 3. The motion for a stay of deportation will be presented to the next available motions panel after receipt of respondent's opposition or notice of non-opposition. In the event respondent's opposition contains a motion to dismiss the petition, both motions will be presented to the next available motions panel.
>
> Accordingly, Petitioner De Leon's deportation is temporarily stayed pending this court's decision on the merits of her motion for a stay of deportation.

IMMIGRATION COURT
550 KEARNY ST., SUITE 800
SAN FRANCISCO, CA 94108

In the matter of	)	No. A35-581-469
	)	
ARIZAGA-RAMOS, ARTURO	)	IN REMOVAL PROCEEDINGS
	)	
Respondemt	)	
	)	
	)	
	)	
	)	
	)	
	)	

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered n Nov. 18, 1998. This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or re-opened, the oral decision will become the official opinion of the case.

[X] The respondent was ordered removed from the United States to MEXICO ort in the alternative to

[ ]

[X] Respondent's application for cancellation of removal under section 240A(a) was () granted ( ) denied (X) ~~withdrawn~~ *pretermitted*

[ ]

[X] Other:

Dated: Nov. 18, 1998 Appeal Due By: 12/18/98

Bette Kane Stockton
BETTE KANE STOCKTON
Immigration Judge

[NOTE: Only the parts of preprinted form X'd by judge are reproduced here, and all X'd parts do appear here.]

EXCERPTS, U.S. CONSTITUTION

ART. I, SECTION. 9.

"[Cl. 1] *****

"[Cl. 2] The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

"[Cl. 3] No Bill of Attainder or ex post facto Law shall be passed."

ART. III, SECTION. 2.

[Cl. 1] The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; to all Cases affecting Ambassadors, other public Ministers and Consuls; to all Cases of admiralty and maritime Jurisdiction; to Controversies to which the United States shall be a Party; to Controversies between two or more States; between a State and Citizens of another State; between Citizens of different States, between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

ARTICLE 6.

[Cl. 2] This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; **and all Treaties made or which shall be made**, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

1ST AMENDMENT

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

5TH AMENDMENT

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

6TH AMENDMENT

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

14TH AMENDMENT

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this Article.

McKechnie, MAGNA CARTA; THE GREAT CHARTER OF KING JOHN

Magna Carta 1215

Art. 36

[Writ of Habeas Corpus]

Nothing shall be given or taken in future for the writ of inquisition of life or limbs: instead it shall be granted free of charge and not refused.

Art. 41

[Foreign Merchants]

All merchants shall be able to go out of and come into England safely and securely and stay and travel throughout England, as well by land as by water, for buying and selling by the ancient and right customs free from all evil tolls, except in time of war and if they are of the land that is at war with us. And if such are found in our land at the beginning of a war, they shall be attached, without injury to their persons or goods, until we, or our chief justiciar, know how merchants of our land are treated who were found in the land at war with us when war broke out, and if ours are safe there, the others shall be safe in our land.

Art. 61

[Security Clauses]

Since, moreover, for God and the betterment of our kingdom and for the better allaying of the discord that has arisen between us and our barons we have granted all these things aforesaid, wishing them to enjoy the use of them unimpaired and unshaken for ever, we give and grant them the under-written security, namely, that the barons shall choose any twenty-five barons of the kingdom they wish, who must with all their might observe, hold and cause to be observed, the peace and liberties which we have granted and confirmed to them by this present charter of ours, so that if we, or our justiciar, or our bailiffs or any one of our servants offend in any way against anyone or transgress any of the articles of the peace or the security and the offence be notified to four of the aforesaid twenty-five barons, those four barons shall come to us, or to our justiciar if we are out of the kingdom, and, laying the transgression before us, **shall petition us to have that transgression corrected** without delay. And if we do not correct the transgression, or if we are out of the kingdom, if our justiciar does not correct it, within forty days, reckoning from the time it was brought to our notice or to that of our justiciar if we were out of the kingdom, the aforesaid four barons shall refer that case to the rest of the twenty-five barons and those twenty-five barons together with the community of the whole land shall distrain and distress us in every way they can,

namely, by seizing castles, lands, possessions, and in such other ways as they can, saving our person and the persons of our queen and our children, until, in their opinion, amends have been made; and when amends have been made, they shall obey us as they did before. And let anyone in the land who wishes take an oath to obey the orders of the said twenty-five barons for the execution of all the aforesaid matters, and with them to distress us as much as he can, and we publicly and freely give anyone leave to take the oath who wishes to take it and we will never prohibit anyone from taking it. Indeed, all those in the land who are unwilling of themselves and of their own accord to take an oath to the twenty-five barons to help them to distrain and distress us, we will make them take the oath as aforesaid at our command. And if any of the twenty-five barons dies or leaves the country or is in any other way prevented from carrying out the things aforesaid, the rest of the aforesaid twenty-five barons shall choose as they think fit another one in his place, and he shall take the oath like the rest. In all matters the execution of which is committed to these twenty-five barons, if it should happen that these twenty-five are present yet disagree among themselves about anything, or if some of those summoned will not or cannot be present, that shall be held as fixed and established which the majority of those present ordained or commanded, exactly as if all the twenty-five had consented to it; and the said twenty-five shall swear that they will faithfully observe all the things aforesaid and will do all they can to get them observed. And we will procure nothing from anyone, either personally or through anyone else, whereby any of these concessions and liberties might be revoked or diminished; and if any such thing is procured, let it be void and null, and we will never use it either personally or through another. [Emphasis added.]